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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,592	08/09/2001	Syuichi Sekine	040301/0229	3589
22428	7590	10/06/2004	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			WIMER, MICHAEL C	
			ART UNIT	PAPER NUMBER
			2828	

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/924,592

Applicant(s)

SEKINE ET AL.

Examiner

Michael C. Wimer

Art Unit

2828

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 2 is/are allowed.
- 6) ☒ Claim(s) 3-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 08/822,737.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

1. The reissue oath/declaration filed with this application is defective because it fails to contain a statement that all errors which are being corrected in the reissue application up to the time of signing of the oath/declaration arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414.

2. Claims 3-16 are rejected as being based upon a defective reissue Declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

3. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wegner (4018998) in view of Tamura (5335368).

Regarding Claims 3-8,12,13, Wegner shows a substantially rectangular communication device with a main casing 22 that includes a microphone

disposed thereon; a pivotable device casing 21 including a speaker 30 mounted thereon that is pivotably connected to the main device casing and configured to be pivoted away from the main device casing. No antenna is shown. Wegner teaches in col. 4, second paragraph, that the device may be employed in walkie-talkies and the device will include an antenna and the requisite parts, and necessary electronics in the lower casing part. Thus, Tamura is cited as evidence of obviousness and as resolving the level of ordinary skill in the antenna art and shows the casing 10 that houses the transceiver circuitry 11 and also mounts the antenna 20 thereon. It would have been obvious to the skilled artisan to employ the antenna on the lower casing part in Wegner since it includes the RF transceiver circuitry.

Regarding Claims 9 and 10, the main casing has two portions where one (the face portion that mounts the microphone) is thinner than the back portion that houses the electronics. Regarding Claim 11, the particular thicknesses are obvious to the skilled artisan and dependent upon the form factor used and size of the circuitry. Regarding Claim 14, the radiation field is obviously dependent upon the distance from the antenna, and any intervening structures. Thus, the mere pivoting the housings relative to each other changes the RF field.

Regarding Claim 15, the length of the housings would have been obvious to the skilled artisan to change depending upon the circuitry mounted therein.

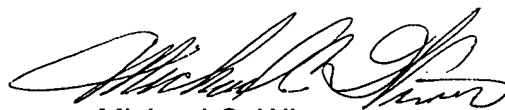
Regarding Claim 16, a mere pivoting of the housings provides the desired result.

6. The design patent to Watanabe (Des. 298,244) is cited as of interest showing a pivotable speaker housing and main housing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Wimer whose telephone number is (571) 272-1833. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minsun O. Harvey can be reached on (571) 272-1835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael C. Wimer  
Primary Examiner  
Art Unit 2828

MCW  
9/22/2004